

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No. 24918 of 2013 (O&M)
DATE OF DECISION :- February 20, 2018**

Krishan Kumar and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Manoj Kaushik, Advocate for the petitioners.

Mr. Gaurav Bansal, AAG, Haryana

Ms. Deepa Jain, Advocate for respondent no3.

By way of filing the present petition under Section 482 Cr.P.C. Petitioner no. 1 Krishan Kumar along with his wife Smt. Meena-petitioner no. 2 seek quashing for calender (Kalandra) No. 9 dated 6.4.2013 under Section 182 IPC registered with Police Station Bhupani, District Faridabad titled "State of Haryana through Amit Kumar Inspector/SHO Vs. Krishan Kumar & Meena" along with all ancillary proceedings.

Interalia in the petition, it is contended that petitioner no. 2 is the elected Sarpanch of village Kanwara Tehsil and District Faridabad; that complainant Harnarayan is ex-Sarpanch of the same village and had been convicted in a criminal case bearing F.I.R. No. 134 dated 21.02.03 under Sections 420, 467, 468, 471 and 120B IPC registered with Police Station Central Faridabad and sentenced to undergo imprisonment for three years;

that F.I.R. was lodged by petitioner no. 1 Krishan Kumar and husband of petitioner no. 2 Smt. Meena, therefore, Harnarayan has been nursing a grudge against the petitioners; that in the present case, Deputy Commissioner of Police, Headquarter directed the Assistant Commissioner of Police to reopen the complaints which had been filed and as a result thereof Assistant Commissioner of Police has recommended proceedings under Section 182 IPC. Therefore, SHO has lodged impugned calender which is against procedure laid down by Cr.P.C. That in the impugned calender on the basis of enquiry report seven points are given. Points no. 1 to 3 are to the effect that trial Courts had tried the F.I.R. cases, points no. 4 and 5 are regarding the enquiries conducted by BDPO, points no. 6 to 7 are with regard to enquiries by SHO; that the SHO concerned had not recommended any proceedings under Section 182 IPC, since he had observed that both the parties have been making false complaints against each other being motivated by vote politics of the village; that SHO is not competent as per Section 195(1) Cr.P.C. to file the calender under Section 182 IPC, therefore it is liable to be quashed. The grounds taken by the petitioners in the petition seeking quashing of the calender are as follows :-

- a. because as per Section 195(1) of the code of Criminal Procedure, the Public officer to whom a false complaint has been made, can himself or officer to whom he is administratively subordinate, can lodge a complaint under Section 182 of IPC.
- b. because the SHO is not competent to initiate the 182 IPC proceedings, in in the present case as the two enquiries were done by BDPO and SHO is not the senior officer to BDPO as required under Section 195(1) of

Cr.P.C. and other two enquiries conducted by SHO were not recommended by him for 182 IPC proceedings as he had given the findings that both the parties have been making false complaints against each other because of vote-politics.

c. because as per law, the Public servant to whom a false complaint has been made, may recommend the proceedings under Section 182 IPC only during the enquiry of the said false complaint. But he can not at a later stage re-enquire/re-open the said complaint to recommend 182 IPC proceedings.

d. because the SHO in the present case has acted on the directions of the DCP and has re-opened and re-enquired the earlier complaints which had been already rested, and has not in the fresh re-opened enquiry has recommended the 182 IPC proceedings.

e. because the 182 IPC proceedings are a total discretion of the public servant/enquiry officer and if during the primary enquiry he has not used his discretion to recommend proceedings under Section 182 IPC, then on a later stage he may not be competent to re-open the said enquiries to subsequently recommend the 182 IPC proceedings.

f. because in none of the enquiry any public servant has recommended the 182 IPC proceedings against the petitioners therefore merely by clubbing all the already enquired complaints and to re-open them just to recommend & initiate 182 IPC proceedings is a clear mis-use of the process of law.

g. because the present case is covered by the present position of law laid down by the judgment of this Hon'ble Court passed in "Vipan Kumar Khurana vs. Manjit Kaur" 2010 (1) RCR (Criminal) 515 AND Rajinder Kumar Chhibar Vs Aseem Bakshi" 2006 (3) RCR (Criminal) 586 AND in Malkiat Singh Vs. State of Haryana" 1992 (2) RCR (Criminal) 10.

Notice of the petition was given to the respondents who have

appeared. In the written reply filed by Assistant Commissioner of Police, Sarai, District Faridabad on behalf of respondent no. 1, preliminary submissions have been made to the effect that earlier this Court vide order dated 14.12.2012 passed in Crl. Misc. No. 39771-M of 2012 had directed Commissioner of Police (respondent no. 2) to look into the grievances of the petitioner and redress the same in accordance with law. Petitioner in the said petition happen to be Harnarayan. His grievances were looked into and an enquiry was conducted by Assistant Commissioner of Police, Sarai which showed a complaint bearing No. 20692 dated 17.10.2012 against Keshav son of Kishan Dutt of the village was given by petitioner no. 2 alleging therein that he had illegally occupied some Panchayat land in the village. The matter was inquired by BDPO Faridabad but the allegations were found to be false. Thereafter a complaint regarding theft of dust, concrete and cement against the complainant was given by petitioner no. 2 which was enquired into by SHO Bhupani and allegations levelled in the complaint were found wrong. The complaint given by respondent no. 2 was signed by various respectable persons of the village but during enquiry they filed their affidavits denying allegations and their signatures on the complaint. The respectables of the village also stated that petitioners are habitual of making false complaints rendering disturbance in the village; that a false F.I.R No. 311 dated 24.8.2006 under Section 379 IPC was registered against Harnarayan and others at Police Station Old Faridabad. During investigation of which it was found that allegations levelled by petitioner No. 2 were false, therefore, F.I.R. was cancelled and submitted before Ilaqa Magistrate on 20.9.2006.

In view of such situation instant case under Section 182 IPC was recommended against the petitioners, who were facing trial before Judicial Magistrate Ist Class, Faridabad, therefore, they are not entitled to seek any relief from this Court. On merits the assertions of the petition are denied whereas pleas taken in the preliminary objections repeated.

I have learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioner argued that in the present case a calender has been presented by Inspector Amit Kumar, SHO, whereas he was not competent to do so in view of Section 195(1) Cr.P.C. Therefore, the calender is liable to be quashed. In support of his contentions, he has referred to authority in cases of *Vipin Kumar Khurana versus Manjit Kaur 2010(1) R.C.R. (Criminal) 515* by a coordinate Bench of this Court, *Rajinder Kumar Chhibbar versus Aseem Bakshi 2006(3) R.C.R. (Criminal) 586* by a coordinate Bench of this Court. The authorities referred to are not applicable due to different facts and circumstances and the context in which such observations have been made.

On the other hand learned State counsel has contended that there is no merit in such arguments put forward by counsel for the petitioner. It was SHO Bhupani who had enquired into complaint regarding theft of dust, cement and concrete against Keshav son of Kishan Dutt of the village submitted by petitioner no. 2 Smt. Meena. Though the complaint was purported to have been signed by various persons but during enquiry it was found that signatures on the complaint were not genuine. During investigation of F.I.R. No. 311 dated 24.8.2006 under Section 379 IPC

registered against Harnarayan and others, the allegations levelled by petitioner no. 2 were found to be false and as a result F.I.R. was cancelled. Therefore, SHO concerned was competent to file the calender and no fault can be found with the same. Nonetheless during the trial it may be open for the petitioner to take any number of objections available to him which can then be considered and disposed of in accordance with law by the trial Court but I do not find any ground to quash calender.

The petition stands dismissed being without merit.

(H.S. MADAAN)
JUDGE

February 20, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No